

1 Robert Hoover figure of \$2,425 represented an allocation?

2 A I don't know that I was aware on January 6, 1992.
3 However, in preparation for these proceedings, it's obvious to
4 me that an allocation was made.

5 MR. SCHONMAN: I have no further questions, Your
6 Honor.

7 JUDGE CHACHKIN: Any redirect?

8 MR. BECHTEL: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BECHTEL:

11 Q I'd direct the witness' attention to Pages 42 and 43
12 of his deposition transcript and I'd ask him to read the
13 passages beginning on Page 42, Line Nine, starting "By Mr.
14 Holt" and ending on Page 43 on Line 12 with the answer "Yes".
15 Read it to yourself and then I'll ask you a question. My
16 question is were the answers given in response to those
17 questions true and correct?

18 A Yes.

19 MR. BECHTEL: May I offer -- I request that this
20 document be marked for identification as Glendale Exhibit 230.

21 JUDGE CHACHKIN: The document described will be
22 marked for identification as Glendale Exhibit 230.

23 (Whereupon, the document referred to
24 as Glendale Exhibit Number 230 was
25 marked for identification.)

1 MR. BECHTEL: In lieu of taking the time to read the
2 questions and answers into the record, I move the admission of
3 Glendale Exhibit 230.

4 JUDGE CHACHKIN: Any opposition -- objection?

5 MR. HOLT: No, Your Honor.

6 JUDGE CHACHKIN: Does the Bureau have any objection?

7 MR. SCHONMAN: No, sir.

8 JUDGE CHACHKIN: Glendale Exhibit 230 is received.

9 (Whereupon, the document referred to
10 as Glendale Exhibit Number 230 was
11 received into evidence.)

12 MR. BECHTEL: That concludes my redirect.

13 JUDGE CHACHKIN: Well, let me ask you a question.
14 You referred previously -- at least Mr. Holt initially was
15 going to ask you some questions about Page 19 of your
16 testimony and that's where you have written figures there.
17 That is your handwriting. Is that correct?

18 WITNESS: Yes, sir.

19 JUDGE CHACHKIN: You prepared this document.

20 WITNESS: Yes, sir.

21 JUDGE CHACHKIN: Now, what could you tell me about
22 the document? How did you prepare it? What information did
23 you use in preparing it? I mean, where did these figures come
24 from?

25 WITNESS: I honestly don't remember preparing this

1 document. However, it appears that the Bob Hoover figures
2 came from information we had in our files about -- in
3 Raystay's files about a Bob Hoover invoice and I've been shown
4 a Telsa invoice for that exact amount, about 1-0-9-2-0-1. So
5 I would expect I was able to find reference to that in
6 Raystay's files.

7 It's possible that I referred to invoices that I
8 could find for Cohen and Berfield's fees or invoices or
9 payments, accounts payable ledger figures, that sort of thing,
10 and the filing fees may have been on the applications or some
11 other reference, FCC filing fees, or something that's
12 disseminated, you know, on forms and that sort of thing.

13 JUDGE CHACHKIN: And you have no recollection of why
14 you gathered this information?

15 WITNESS: I have no recollection of why I gathered
16 it. However, it would appear that I was gathering the figures
17 to prepare for the possible transfer of one or more of the
18 C.P.'s.

19 JUDGE CHACHKIN: And you don't recall -- do you
20 recall any discussions with anybody after you prepared this
21 sheet?

22 WITNESS: I recall at sometime in the fall of 1991,
23 that Lee Sandifer asked me to work with Mort Berfield on
24 preparing this type of information. But my recollection is
25 that it was after I and Lee Sandifer talked about the Trinity

1 offer.

2 JUDGE CHACHKIN: Do you recall anything else about
3 the -- any discussions you had concerning this -- these
4 calculations that you made?

5 WITNESS: No.

6 JUDGE CHACHKIN: Any further questions of this
7 witness?

8 MR. HOLT: Yes, Your Honor, in response to Mr.
9 Bechtel's exhibit, I'd like to direct the witness to another
10 portion of -- in his deposition testimony, commencing on Page
11 45, Line 12. Question: "What do you recall discussing with
12 Mr. Berfield regarding the November 7, 1991 letter that he
13 sent to you?" Answer: "I recall that he said he created it
14 and he believes that he FAX'ed it to me." Question:
15 "Anything else?" Answer: "I don't recall anything else that
16 he said about the November 7th letter, except that he created
17 it and he got the figures from Bob Hoover or for Bob Hoover
18 from the invoice that we previously referred to and apparently
19 there's an invoice from Telsa that was paid and he got the
20 figures for that off of that invoice."

21 RECROSS EXAMINATION

22 BY MR. HOLT:

23 Q Was that question and were those answers posed at
24 your deposition?

25 A Yes.

1 Q And the answers you provided were truthful at the
2 time you gave them, were they not?

3 A Yes.

4 MR. HOLT: I have no further questions, Your Honor.

5 JUDGE CHACHKIN: Do you have anything further, Mr.
6 Bechtel?

7 MR. BECHTEL: Thank you. I've handed to the
8 reporter two copies of a document commencing on Page 29 and
9 concluding on Page 41 and ask that that be marked for
10 identification as Glendale Exhibit 231.

11 JUDGE CHACHKIN: The document described is marked
12 for identification.

13 (Whereupon, the document referred to
14 as Glendale Exhibit Number 231 was
15 marked for identification.)

16 MR. BECHTEL: If anyone has a copy that also
17 includes Pages 42 and 43, pull those. We previously had them
18 in evidence as Glendale Exhibit 230 and I ask the witness to
19 read that material.

20 JUDGE CHACHKIN: We'll go off the record.

21 (Off the record 9:48 a.m. On the record 9:53 a.m.)

22 JUDGE CHACHKIN: Mr. Gardner has indicated that he's
23 finished reading the portion of the deposition.

24 REDIRECT EXAMINATION

25 BY MR. BECHTEL:

1 Q I know there's an awful lot of stuff in there, but
2 do you recall -- do you believe those answers that you gave to
3 those questions were correct or did anything stand out as
4 perhaps you made an error?

5 A No.

6 Q So you do believe that they were correct?

7 A Yes.

8 MR. BECHTEL: Thank you. I offer that exhibit in
9 evidence.

10 MR. HOLT: Your Honor, I'm not certain what purpose
11 it's being offered for, so I would request that --

12 JUDGE CHACHKIN: What purpose is it being offered
13 for?

14 MR. BECHTEL: We started with some testimony this
15 morning, a yes answer to a question relative to whether this
16 witness thought Mr. Berfield had a copy of the invoice. I
17 then put in evidence Exhibit 230 which was testimony to the
18 effect that he couldn't recall whether Mr. Berfield was
19 referring -- was indicating that he had a copy of the invoice
20 or he referred to the figure on the invoice.

21 Then Mr. Holt read another piece of testimony, a
22 couple of pages later in the deposition transcript, referring
23 back to the earlier testimony, and now I have offered the
24 entire scope of his examination on that subject which
25 includes, for example, at Pages 32 and 33, indications that he

1 | did not know whether or not Mr. Berfield had the invoice at
2 | the time he prepared the letter.

3 | There's a lot of stuff in there and I'm sure Mr.
4 | Holt has something he will cite, too, and I've got a lot of
5 | stuff I'm going to cite, too, and then, of course, we have Mr.
6 | Berfield's testimony which says he never saw the invoice.
7 | Now, it's relevant to that whole attempt on the part of
8 | Trinity to create the impression on this record that Mr.
9 | Berfield had the invoice showing the allocations, whenever
10 | they were, at the time he made his one-third allocation.

11 | MR. HOLT: Your Honor, I would have no objection to
12 | the admission of these pages, but I would request that to have
13 | a complete scope of the examination, we would include through
14 | Page 46 which basically ends my line of questioning on this
15 | subject and does relate to the question of whether or not Mr.
16 | Berfield referred to the March 31st invoice at the time that
17 | he prepared his November 7th letter which was one of the
18 | questions that was posed and which is what I was seeking to
19 | elicit.

20 | MR. BECHTEL: I certainly have no objection to that.

21 | JUDGE CHACHKIN: What are we talking about, two more
22 | pages?

23 | MR. HOLT: Yeah, just two additional pages from the
24 | deposition and I'd be happy to -- we would -- Mr. Bechtel has
25 | offered through Page 43 and I would request that through Page

1 46 actually be submitted. I'd be happy to provide copies to
2 the Court and to the parties.

3 JUDGE CHACHKIN: You know, what fascinates me about
4 all this is the fact that Mr. Hoover has not been called. I
5 don't know if he's even been deposed. Is he still alive? And
6 if not, since he seems to be such a central player in all this
7 and he lives in Bethesda, why hasn't he been called? He's the
8 -- that's the one to testify about whether he sent an invoice
9 to Mr. Berfield, a copy of the invoice, whether he discussed
10 this specific invoice with Mr. Berfield, also, what he meant
11 in his invoice when he said what he said there.

12 I mean, why hasn't Mr. -- all the other witnesses --
13 you've found witnesses all over the world. He's the most
14 important witness, it seems to me, dealing with engineering
15 fees. Why is he being excluded? Is there some reason?

16 MR. HOLT: I'm not sure if there's a specific
17 reason, Your Honor. I believe that the invoice on its face --

18 JUDGE CHACHKIN: The invoice on its face says
19 nothing unless -- I mean, why -- if we have a witness who's
20 readily available, who can tell us what he meant by the
21 invoice, who can tell us about any conversations he had, could
22 tell us about what work he did in connection with any
23 particular permit. Why are we playing games with trying to
24 base it on what it says on the invoice and why -- I don't
25 understand it.

1 I mean, in this case, I think the parties have gone
2 through extreme lengths, and I say that conservatively, to
3 depose anyone imaginable who might have the least bit of
4 information and here we've skirted all around Mr. Hoover and
5 he's available and nobody has deposed him and nobody has
6 called him. I don't understand that frankly. I'm supposed to
7 guess what Mr. Hoover meant and about all these things,
8 testimony about Mr. Hoover, when nobody called up Mr. Hoover
9 to find him. Can anybody tell me why Mr. Hoover was not
10 called? Is there some reason?

11 MR. HOLT: Your Honor, Trinity believes the document
12 speaks for itself and --

13 JUDGE CHACHKIN: The document doesn't speak for
14 itself. We don't know what Mr. Hoover meant by that as
15 practice. You can't draw conclusions from that. And if you
16 want to know about whether Mr. Hoover gave the -- what he said
17 to Mr. Berfield -- I mean, why wasn't -- isn't Mr. Hoover the
18 best witness, instead of asking this witness what Mr. Berfield
19 might've told him what he had from Mr. Hoover?

20 MR. HOLT: Your Honor, we believe the fact that Mr.
21 Berfield told David Gardner the day before his deposition that
22 he referred to the March 31st invoice when he prepared his
23 1991 letter establishes the facts that we want to establish.

24 MR. BECHTEL: Well, but he didn't -- he didn't
25 testify to that. He denied that in his testimony and this

1 witness' testimony is unclear.

2 MR. HOLT: Well, that's something that can be argued
3 in findings, Your Honor.

4 JUDGE CHACHKIN: Well, is there some reason why Mr.
5 Hoover wasn't called? Why didn't the Bureau? I mean, he is
6 in Bethesda. He's not far off somewhere. I assume the Bureau
7 can afford a phone call to Bethesda. It really escapes me why
8 Mr. Hoover, who -- and there's been more testimony about the
9 engineering than just about anything else, engineering and
10 legal, and we've had piles and piles of depositions and
11 documents and the witness is a local telephone call and
12 nobody's called him.

13 I find that extraordinary and I don't -- I'm not
14 going to draw any conclusions about what that document means.
15 I can't draw any conclusions from what Mr. Hoover meant. He
16 may have this practice of saying each because he did five
17 documents. I don't know which one he did more work for, which
18 one -- I mean, there's been testimony from Mr. Berfield that
19 there was a lot more work involved in one -- in the one than
20 there was in all the others, a lot more FAA work than all the
21 rest. I don't know.

22 What am I supposed to do with that when it's so easy
23 to have Mr. Hoover? So I -- it seems to me that if we're
24 going to place any reliance on Mr. Hoover -- I hate to extend
25 this extended hearing, but why don't we have Mr. Hoover here

1 to give us some answers to questions apparently which concern
2 you, Mr. Holt?

3 MR. HOLT: Your Honor, I'm not certain that there's
4 ever been any testimony that Mr. Hoover was involved in the
5 preparation of the certification or any allocation process and
6 --

7 JUDGE CHACHKIN: That may be so, but you questioned
8 whether -- what he meant in the document when he -- whether
9 this means anything. You say that's one of the, it seems to
10 me, one of your major points, that the document speaks for
11 itself. How can the document speak for itself? I don't know
12 what Mr. Hoover's practice is, whether he even considered when
13 he wrote the document that he was doing similar work for each
14 application in his judgement or whether this was his practice
15 since he had five applications. so he said -- I don't know
16 what he meant.

17 MR. HOLT: Your Honor, I think also the burden --

18 JUDGE CHACHKIN: And I don't know what he -- I don't
19 know what conversations, if any, he had with Mr. Berfield.

20 MR. HOLT: The burdens of proof in proceeding in
21 this issue, Your Honor, were assigned to Glendale and if he
22 had such information --

23 JUDGE CHACHKIN: Well, they made their case. They
24 said that there was nothing wrong with it. But you've gone
25 through an awful length -- awful trouble to bring out a lot of

1 witnesses, to insist on a lot of witnesses, and it would seem
2 to me that if you wanted to find out what was happening, you
3 would've called Mr. Hoover. You deposed everybody else
4 imaginable. He's one of the central people. Mr. Bechtel,
5 what are your views? Do we need Mr. Hoover?

6 MR. BECHTEL: My views are that the time has passed
7 for the opposing parties to try to bring him in and this
8 point, we've made our case and at this point, I don't see the
9 need to call him and delay this thing further. Perhaps if we
10 were back at the beginning of discovery, it would be something
11 else. But we've put our proofs in. It's been a long and
12 expensive effort and I think we ought to close it out.

13 JUDGE CHACHKIN: What's the Bureau's view?

14 MR. SCHONMAN: I would have to concur with Mr.
15 Bechtel. I don't see any need to call Mr. Hoover. I think
16 the record is -- will reflect what it states and we'll have to
17 draw conclusions from the record evidence, documents and
18 testimony.

19 JUDGE CHACHKIN: Well, I'll tell you right now, I'm
20 not going to draw any conclusion from Mr. Hoover's invoice as
21 to that in any way implies that he did more or less work on
22 behalf of one application as opposed to another application.
23 I can't draw any conclusion from that.

24 MR. SCHONMAN: Your Honor, might I speak to that?

25 JUDGE CHACHKIN: Yes.

1 MR. SCHONMAN: With all due respect, I think the
2 amount of work that Mr. Hoover may or may not have performed
3 is really not an issue. It's the amount of expenses that
4 Raystay incurred with respect to the Red Lion C.P. Now, if
5 that receipt reflects that Mr. Hoover charged Raystay \$1,500
6 less some discount for the Red Lion C.P. and a certain amount
7 also for FAA work, whatever amount is reflected on the bill,
8 that represents expenses that Raystay incurred specifically
9 for the Red Lion C.P.

10 JUDGE CHACHKIN: I don't agree with you frankly. I
11 think -- I think in determining whether it was reasonable of
12 Mr. Berfield to allocate it in the manner in which he did,
13 it's necessary to know exactly what work Mr. Hoover did and
14 not the fact that Mr. Hoover might've decided on his own to --
15 the way he broke it down, but it seems to me the substance is
16 important.

17 If, in fact, the work that was entailed by Mr.
18 Hoover -- and although Mr. Hoover may, as a shorthand,
19 might've put five of them -- the five applications, this is
20 the total figure, what in retrospect, if in fact the work that
21 Mr. Hoover performed was -- he expended much more time and he
22 could reflect it by the amount of time he expended for one
23 application as opposed to the other, then it seems to me
24 that's what governs whether it was reasonable to include Mr.
25 Hoover's fee, not the fact that he, for shorthand, for his

1 | bookkeeping purposes, he might've put down five applications,
2 | this is the figure.

3 | We're dealing with what was reasonable and the
4 | reasonableness, it seems to me, is based on what work was
5 | performed for each application, just as a lawyer. If a lawyer
6 | might've said, for instance -- done the exact same allocation,
7 | but in fact, if the lawyer did most of the work and billed
8 | most of the work, his hours, on behalf of one application as
9 | opposed to the other application, notwithstanding his
10 | invoice, that would govern what's reasonable.

11 | That's why I say why I believe that Mr. Hoover's
12 | important. If you want to make the argument -- because that's
13 | what's important, not what the invoice says, but what Mr.
14 | Hoover actually did and I can't determine what Mr. Hoover
15 | actually did on the basis of the invoice. I could only
16 | determine based on what Mr. Berfield has testified. That's
17 | the only evidence in this record so far as to why he believed
18 | that it was proper to allocate it in the manner in which he
19 | did.

20 | That's my view and I'm telling you right now, Mr.
21 | Holt, that's my view. I don't agree with you that the invoice
22 | by itself determines whether it was reasonable or not to
23 | allocate in the manner in which he did.

24 | MR. HOLT: Yes, Your Honor.

25 | JUDGE CHACHKIN: All right. So the parties have had

1 an opportunity to call Mr. Hoover and they've decided not to,
2 so -- you're excused, by the way, sir. I'm sorry to keep you
3 here.

4 WITNESS: This has been very interesting.

5 JUDGE CHACHKIN: I'm telling you, that's my view.
6 We're dealing with reasonableness and the record will reflect
7 what it reflects, that if the parties don't feel that Mr.
8 Hoover is necessary, then the record will be what it is.

9 MR. BECHTEL: That concludes our presentation

10 JUDGE CHACHKIN: All right. Then I'm prepared to
11 close the record, except you have some pages you wanted to --

12 MR. HOLT: Yes, Your Honor.

13 JUDGE CHACHKIN: I understand there's a number of
14 other exhibits of yours which have been identified and not
15 been offered -- before I close the record.

16 MR. HOLT: Thank you, Your Honor.

17 JUDGE CHACHKIN: What do you want to do about those
18 documents?

19 MR. HOLT: Your Honor, I believe that we've had
20 everything -- I moved everything into evidence that we intend
21 to move.

22 JUDGE CHACHKIN: So as far as all the other
23 documents, you're not offering them. Is that right?

24 MR. SHOOK: Your Honor, could we clarify for record
25 keeping purposes which of the Trinity documents are --

1 JUDGE CHACHKIN: Well, let me go over them. TBF
2 Exhibit 274 is not offered. TBF Exhibit 276 is not offered.
3 TBF Exhibit 278 is not offered. TBF Exhibit 280 is not
4 offered. TBF Exhibit 281 is not offered. TBF Exhibit 282 is
5 not offered. TBF Exhibit 283 is not offered.

6 MR. HOLT: Exhibit 283 was offered, Your Honor.

7 JUDGE CHACHKIN: A check drawn on the account of
8 Adwave? That has been offered?

9 MR. HOLT: Yes, Your Honor.

10 JUDGE CHACHKIN: Is that received? Was that -- I
11 don't have any recollection --

12 MR. HOLT: I'm sorry. I may be mistaken.

13 JUDGE CHACHKIN: It was identified.

14 MR. HOLT: I would like to offer 283.

15 JUDGE CHACHKIN: Any objection to 283?

16 MR. BECHTEL: No objection.

17 JUDGE CHACHKIN: All right. 283 is received.

18 (Whereupon, the document referred to
19 as TBF Exhibit Number 283 was
20 received into evidence.)

21 JUDGE CHACHKIN: 284 was not offered. 285 was not
22 offered. 286 was not offered. 287 was not offered. 288 was
23 not offered. 289 was not offered. 290 was not offered. I
24 believe that's it.

25 MR. HOLT: 231, then, would be -- would be -- you

1 indicated that you'll permit me to augment this by submitting
2 three additional pages through Page 46?

3 JUDGE CHACHKIN: You wanted to offer as 295 three
4 additional pages from the deposition?

5 MR. HOLT: Yes, sir.

6 JUDGE CHACHKIN: I understand you had no objection
7 to his portion of the deposition.

8 MR. HOLT: Correct And I can make that a separate
9 exhibit.

10 JUDGE CHACHKIN: All right. I'll -- any object--
11 well, first of all, let me identify. They're three pages of
12 the deposition of Mr. David Gardner. What pages are they now?

13 MR. HOLT: They would be Page -- the entire portion
14 of Page 43 through the end of Page 46.

15 JUDGE CHACHKIN: All right. That document is
16 identified as TBF Exhibit 295.

17 (Whereupon, the document referred to
18 as TBF Exhibit Number 295 was marked
19 for identification.)

20 JUDGE CHACHKIN: Any objection to its receipt?

21 MR. BECHTEL: No, sir.

22 JUDGE CHACHKIN: TBF Exhibit 295 is received.

23 Permission is granted for purposes of supplying copies to the
24 court reporter and the parties and the judge.

25 (Whereupon, the document referred to

1 as TBF Exhibit Number 295 was
2 received into evidence.)

3 MR. HOLT: Also, Your Honor, I would -- I'm sorry?

4 MR. TOPEL: Your Honor, has Glendale 231 been
5 formally received?

6 MR. BECHTEL: No, it has not and I was going to ask
7 the Court to -- Glendale 231 which was the 29 pages, 29
8 through 41.

9 JUDGE CHACHKIN: Yes, yes. I agree. That has not
10 been ruled on and I understand there's no objection to that.
11 All right, Glendale Exhibit 231 is received.

12 (Whereupon, the document referred to
13 as Glendale Exhibit Number 231 was
14 received into evidence.)

15 JUDGE CHACHKIN: Now, I want to understand the
16 parties are offering this for the purpose to counter any claim
17 of impeachment or for admission purposes -- or what is it
18 being offered for?

19 MR. BECHTEL: I'm offering it to -- whether its
20 impeachment, I'm not sure it's that. But I'm offering it as
21 substantive testimony by this witness which he has adopted on
22 the subject of what he knows about or was told by Mort
23 Berfield about how Mort Berfield got the figure, the
24 engineering figure, and whether he had the invoice in his
25 possession at the time he wrote the letter. The genesis of it

1 was the question this morning on that.

2 JUDGE CHACHKIN: All right. I assume you're
3 offering yours for the same reason?

4 MR. HOLT: Correct, Your Honor.

5 JUDGE CHACHKIN: Substantive reason, all right. I
6 don't recall his deposition being essentially different than
7 what he said on the stand, but perhaps maybe it is. I don't
8 know. In any event, anything else?

9 MR. HOLT: Your Honor, we might request some
10 information from Glendale regarding when it will advise us on
11 the stipulation that we've requested regarding the fact that
12 TBF Exhibit 294 was never produced in the last phase of the
13 proceeding.

14 MR. BECHTEL: We'd like to have until -- what day of
15 the week is today, Thursday? -- until the close of business
16 tomorrow.

17 JUDGE CHACHKIN: All right. So what do you want me
18 to do, keep the record open or just -- well, I'm prepared to
19 close the record and then if the stipulation is agreed to,
20 that could be -- the record could be opened for that purpose.

21 MR. HOLT: Thank you, Your Honor.

22 JUDGE CHACHKIN: Anything else?

23 MR. SHOOK: Setting dates.

24 JUDGE CHACHKIN: All right. Then let's go off the
25 record.

1 (Off the record 10:14 a.m. On the record 10:20 a.m.)

2 JUDGE CHACHKIN: The following dates have been
3 established for proposed findings and replies to findings.
4 The parties will file their findings on or before August 5,
5 1994 and any replies will be filed on or before September 9,
6 1994. All right, we're now in recess.

7 (Whereupon, at 10:20 a.m. on Thursday, May 5, 1994,
8 the hearing adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.
Name AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75
Docket No.

WASHINGTON, D.C.
Place

MAY 5, 1994
Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 5697 through 5740, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

May 16, 1994

Date

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